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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NATIONAL UNION FIRE INSURANCE
11 COMPANY OF PITTSBURGH, PA,

12 Plaintiff-In-
13 Interpleader,

14 vs.

15 ALAN J. SMITH, individually; the
16 Personal Representative of the ESTATE
17 OF SUSANN SMITH; and THE STATE
18 OF WASHINGTON, DEPARTMENT OF
19 CHILD PROTECTIVE SERVICES, as
20 guardian for the two minor children of
21 Susann Smith and Alan J. Smith,

22 Defendants-In-
23 Interpleader.

24 NO.

25 COMPLAINT IN INTERPLEADER

26 COMES NOW plaintiff-in-interpleader, National Union Fire Insurance
27 Company of Pittsburgh, PA ("National Union"), and for its Complaint-in-Interpleader
against Defendants-in-Interpleader, states and alleges as follows:

28 I. PARTIES

29 1. National Union is organized under the laws of the State of Pennsylvania with
30 its principal place of business in New York, New York. National Union is and was at
31 all times relevant to this Complaint authorized to do business in the State of
32 Washington.

33 COMPLAINT IN INTERPLEADER – 1

34 AIG010 0001 oh215319tz

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2. Upon information and belief, defendant-in-interpleader Alan J. Smith was at all times relevant herein an individual residing in Bothell, Snohomish County, Washington.

3. Upon information and belief, Susann Smith died intestate on February 12, 2013 in Snohomish County, Washington. National Union is unaware whether a personal representative has been appointed on behalf of the Estate of Susann Smith.

4. Susann Smith and Alan J. Smith were husband and wife until Susann Smith's death on February 12, 2013.

5. Upon information and belief, Susann Smith and Alan J. Smith are the natural parents of two minor children who are currently in the custody of the State of Washington, Department of Child Protective Services.

II. JURISDICTION AND VENUE

1. The defendants-in-interpleader are adverse claimants to \$150,000 in life insurance benefits from a group life insurance policy issued to The Boeing Company by National Union to fund insurance benefits offered by The Boeing Company to its employees (the “Policy”). The Policy is governed by the Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. et. seq.

2. National Union qualifies as a fiduciary for purposes of ERISA, 29 U.S.C. sec. 1132(a)(3)(B)(ii); *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030 (9th Cir. 2000), because it is responsible for administering claims for The Boeing Company under the Policy and it has authority to grant or deny claims.

3. National Union seeks equitable relief, under ERISA, 29 U.S.C. sec. 1132(a)(3)(B)(ii), by bringing this interpleader action to protect itself against multiple liability and from the expense of multiple litigation. *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030 (9th Cir. 2000).

4. National Union seeks to enforce the terms of the Policy by ensuring the proper distribution of the life insurance policy death benefit. 29 U.S.C. sec. 1132(a)(3)(B)(ii); *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030 (9th Cir. 2000).

5. The Policy provides dependents of participating employees of The Boeing Company with certain disability, life and accidental death benefits. The death benefit for a spouse of a participating employee is \$150,000.

6. Defendants-in-interpleader are residents of this judicial district, and the events giving rise to this Complaint-In-Interpleader arose within this judicial district.

III. CLAIM FOR RELIEF

1. National Union issued Group Accident Insurance Policy No. PAI-0009128543, with a policy term of January 1, 2013 to January 1, 2014 to The Boeing Company. The relevant portions of the Summary Plan Description are attached to this Complaint-In-Interpleader as Exhibit 1. A copy of the Master Application for this Policy is also attached to this Complaint as Exhibit 2.

2. Defendant-in-interpleader Alan J. Smith was employed by The Boeing Company continuously from August 31, 2007 to, and including, February 12, 2013.

3. Upon information and belief, Susann Smith and Alan J. Smith have two minor children, both of whom are in the custody of the State of Washington.

4. On February 12, 2013, Susann Smith was murdered.

5. On April 17, 2013, defendant-in-interpleader Alan J. Smith made a claim for the \$150,000 accidental death benefits under the Policy on the life of his wife, Susann Smith.

6. On June 27, 2013, defendant-in-interpleader Alan J. Smith was arrested by the Bothell Police Department and charged with murdering his wife, Susann Smith, and this charge is the subject of a criminal action against Alan J. Smith now pending in Snohomish County Superior Court, No. 13-1-01546-8.

1 7. Under the terms of the Policy, where the spouse of a covered
2 employee dies, "*the plan pays benefits to you, unless another beneficiary has been*
3 *named.*" No other beneficiary was named by Alan J. Smith for the death benefit.

4 8. Under the terms of the Policy, if the insured does not designate a
5 beneficiary, the death benefit will be paid to the insured's surviving family members
6 in the following order: (1) Your spouse; (2) Your child or children, in equal shares.

7 9. RCW 11.84.100 provides, in relevant part, that any insurance proceeds
8 payable to the "slayer" as the beneficiary of any policy of insurance on the life of
9 decedent, shall be paid instead to the estate of the decedent.

10 10. Pursuant to RCW 11.84.100, if it is determined that Alan J. Smith is a
11 "slayer" within the meaning of RCW 11.84.100, he is not entitled to receive the Policy
12 death benefit.

13 11. Upon information and belief, Susann Smith died intestate.

14 12. National Union is unsure as to the proper recipient of the \$150,000
15 death benefit. National Union is prevented by Washington law, RCW 11.84.100,
16 from paying the \$150,000 death benefit to Alan J. Smith without hazard to itself and
17 without assuming responsibility for determining doubtful questions of law and fact.
18 Based upon the same Washington statute, the Estate of Susann Smith may have a
19 claim for the death benefit payable under the Policy. Based upon the language of
20 the Policy, the minor children of Susann Smith and Alan J. Smith may have a claim
21 for the death benefit payable under the Policy. National Union cannot distribute the
22 benefits of the Policy to any of these potential claimants without exposing National
23 Union to the threat of multiple and vexatious litigation in the future as well as
24 potential multiple liability for the same claim.

25 13. Alan J. Smith has declined National Union's request to relinquish his
26 rights to the Policy benefits.

1 14. National Union claims no beneficial interest in the Policy benefits and is
2 a mere stakeholder.

3 15. National Union is now, and has at all times has been, ready, willing and
4 able to pay the person or persons legally entitled to the Policy benefits; and National
5 Union now seeks permission to deposit into the Registry of this Court the \$150,000
6 death benefit due under the Policy.

7 WHEREFORE, plaintiff-in-interpleader National Union prays for judgment as
8 follows:

9 1. That the aforesaid \$150,000 life insurance death benefit be accepted
10 into the Registry of this Court, to be held in an interest-bearing account for future
11 disbursement according to the judgment of this Court;

12 2. That the Court adjudicate and identify the person or persons legally
13 entitled to the life insurance death benefits due under Policy No. PAI 0009128543;

14 3. That defendants-in-interpleader be required to assert their respective
15 claims to the benefits paid into the Registry of this Court and to settle between
16 themselves their rights or claims to the aforesaid benefits;

17 4. That National Union be discharged from all further liability related to the
18 proceeds of Policy No. PAI 0009128543; and

19 5. Such other and further relief as the Court determines to be proper.

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COMPLAINT IN INTERPLEADER – 5

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1 DATED this 4th day of February, 2014.
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CARNEY BADLEY SPELLMAN, P.S.

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5 By /s/ Linda B. Clapham

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